

United States District Court
Middle District of Florida
Jacksonville Division

CONCH HOUSE BUILDERS, LLC,

Plaintiff,

v.

NO. 3:20-cv-1337-J-39PDB

LANDMARK AMERICAN INSURANCE COMPANY ETC.,

Defendants.

Order

Before the Court is Conch House Builders, LLC's motion for leave to amend the complaint. Doc. 20. Conch House includes the proposed amended complaint, Doc. 20 at 8–27, and exhibits to the proposed amended complaint, Docs. 20-1–20-13.

On December 21, 2020, Brown & Brown of Florida, Inc., moved to dismiss count III of the complaint under Federal Rule of Civil Procedure 12(b)(6). Doc. 17. On December 22, 2020, Landmark American Insurance Company and Arch Specialty Insurance Company answered the complaint and asserted affirmative defenses. Doc. 18. On December 28, 2020, Conch House filed the current motion. Docs. 20–20-13.

Conch House seeks to amend the complaint to add or clarify factual allegations, remove a declaratory-judgment count, and add new causes of action against two defendants already named. Doc. 20 at 3. Conch House states, “Arch and Landmark filed an Answer on December 22, 2020. []

Therefore, [the plaintiff] must now seek leave to amend its Complaint as opposed to filing its amendment as a matter of right.” Doc. 20 at 2.

Brown & Brown responds amendment is futile and fails to correct deficiencies identified in the motion to dismiss but it has no legal basis for opposition because Conch House can amend as a matter of right. Doc. 22.

Conch House states that Landmark and Arch oppose amendment. Doc. 20 at 4. They have filed no response, and the time to do has passed.

Federal Rule of Civil Procedure 15 provides, “A party may amend its pleading once as a matter of course within” “21 days after serving it, or” “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(A)–(B). Since 2009, “the right to amend once as a matter of course is no longer terminated by service of a responsive pleading.” Fed. R. Civ. P. 15 Advisory Committee Notes (2009 Amendment).

When Conch House moved to amend on December 28, 2020, it needed no court order. Because Conch House filed the proposed amended complaint and exhibits on that date and has not previously amended the complaint, the amendment is considered permitted as a matter of right. The Court **grants** the motion to amend, Doc. 20, to the extent Conch House must file the amended complaint and exhibits—Doc. 20 at 8–27 and Docs. 20-1–20-13—as a standalone docket entry by **January 14, 2021**. The defendants must respond to the amended complaint by **February 4, 2021**.

In light of the amended complaint, the Court denies the motion to dismiss, Doc. 17, without prejudice to raising the same arguments again.

Ordered in Jacksonville, Florida, on January 13, 2021.



PATRICIA D. BARKSDALE
United States Magistrate Judge